

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court. [I.C., § 67-5276, as added by 1992, ch. 263, § 48, p. 783.]

67-5277. Judicial review of issues of fact. — Judicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code. [I.C., § 67-5277, as added by 1992, ch. 263, § 49, p. 783.]

Cited in: *Jefferson County v. Eastern Idaho Regional Medical Ctr.*, — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

67-5278. Declaratory judgment on validity or applicability of rules. — (1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule, or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

(2) The agency shall be made a party to the action.

(3) A declaratory judgment may be rendered whether or not the petitioner has requested the agency to pass upon the validity or applicability of the rule in question. [1965, ch. 273, § 7, p. 701; am. and redesign. 1992, ch. 263, § 50, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5207 and was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: *Idaho Falls Consol. Hosps. v. Board of County Comm'rs*, 104 Idaho 628, 661 P.2d 1227 (1983).

ANALYSIS

Compliance with § 39-418.

Jurisdiction.

Right to challenge rules.

Compliance with § 39-418.

The remedies of this section are not available after a final determination of the Board unless the provisions of § 39-418 are strictly complied with; § 39-418 dictates the exclusive procedure for appeal or review of a final board decision unless the procedure fails to provide an adequate remedy. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712

P.2d 657 (Ct. App. 1985).

Jurisdiction.

Where no final determination of the District Board of Health was involved, the Board did not raise the question of whether the action for declaratory relief was timely filed before the district court, the parties essentially agreed upon the facts, evidence was adduced in the district court for determination of one disputed factual issue, and neither party had challenged any of the court's findings, the district court had jurisdiction under § 39-417 to engage in the review authorized by this section. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Right to Challenge Rules.

While an applicant has no proprietary "right" to a license before it is duly issued, it will not be gainsaid that she has a "right" to consideration of her application under valid legal standards; this right was sufficient to

confer standing to challenge a rule. *Rawson v. Idaho State Bd. of Cosmetology*, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985).

67-5279. Scope of review — Type of relief. — (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced. [I.C., § 67-5279, as added by 1992, ch. 263, § 51, p. 783.]

Compiler's notes. Section 52 of S.L. 1992, ch. 263 contained a repeal and § 53 is compiled as § 67-5291.

Cited in: *Jefferson County v. Eastern Idaho Regional Medical Ctr.*, — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

Substantial Evidence.

Where other than an advertisement in a local newspaper and a general survey sent to psychologists on current rates, health care

provider presented no other documentation of its efforts to seek the services of a qualified consultant at a medicaid allowable rate, there was substantial, competent evidence to support the hearing officer's finding that health care provider did not make sufficient effort to meet the Medicaid requirements. *Boise Group Homes, Inc. v. State Dep't of Health & Welfare*, 123 Idaho 908, 854 P.2d 251 (1993).

67-5280 — 67-5290. [Reserved.]

67-5291. Legislative review of adopted rules. — The standing committees of the legislature may review adopted rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted

approving the rule, or rejecting, amending or modifying the rule where it is determined that such rule violates the legislative intent of the statute under which such rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which such rule was made. Where an agency submits a rule or part of a rule which has been adopted or which has repealed or amended an already existing rule, the rejection, amendment or modification of the new rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of such concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of the new rule, or the incorporation of any legislative amendments to the new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms. [1969, ch. 48, § 2, p. 125; am. 1976, ch. 185, § 2, p. 671; am. 1979, ch. 104, § 1, p. 250; am. 1979, ch. 112, § 1, p. 356; am. 1981, ch. 243, § 1, p. 486; am. 1985, ch. 13, § 2, p. 18; am. 1990, ch. 22, § 1, p. 33; am. and redesign. 1992, ch. 263, § 53, p. 783; am. 1995, ch. 196, § 3, p. 686.]

Compiler's notes. This section was formerly compiled as § 67-5218 and was amended and redesignated as § 67-5291 by § 53 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 1-5 of S.L. 1994, ch. 394 read: "Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1994, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code which have been affirmatively approved, modified or amended by the adoption of a Concurrent

Resolution by both the Senate and House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved modified or amended language until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been

approving the rule, or rejecting, amending or modifying the rule where it is determined that such rule violates the legislative intent of the statute under which such rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which such rule was made. Where an agency submits a rule or part of a rule which has been adopted or which has repealed or amended an already existing rule, the rejection, amendment or modification of the new rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of such concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of the new rule, or the incorporation of any legislative amendments to the new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms. [1969, ch. 48, § 2, p. 125; am. 1976, ch. 185, § 2, p. 671; am. 1979, ch. 104, § 1, p. 250; am. 1979, ch. 112, § 1, p. 356; am. 1981, ch. 243, § 1, p. 486; am. 1985, ch. 13, § 2, p. 18; am. 1990, ch. 22, § 1, p. 33; am. and redesign. 1992, ch. 263, § 53, p. 783; am. 1995, ch. 196, § 3, p. 686.]

Compiler's notes. This section was formerly compiled as § 67-5218 and was amended and redesignated as § 67-5291 by § 53 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 1-5 of S.L. 1994, ch. 394 read: "Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1994, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code which have been affirmatively approved, modified or amended by the adoption of a Concurrent

Resolution by both the Senate and House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved modified or amended language until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been

continued in full force and effect until July 1, 1995, pursuant to Section 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule contained in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Sections 1-5 of S.L. 1993, ch. 342 read:

"Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1993, pursuant to the provisions of Subsections (1) and (2) of Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved, modified or amended language until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Sections 67-5218 [now § 67-5291] and 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1994, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing

contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 52 of S.L. 1992, ch. 263 contained a repeal and § 51 is compiled as § 67-5279.

Section 2 of S.L. 1995, ch. 196 is compiled as § 67-5226.

ANALYSIS

Authority of agency.
Concurrent resolution.
—Required contents.
Constitutionality.
Legislative approval advisory.
Purpose.
Rejection of rules.

Authority of Agency.

An agency must be acting within the grant of its authority for this section to apply; accordingly, where the Public Utilities Commission was found to be without specific statutory authority to promulgate intervenor funding rules allowing costs and attorney fees in proceedings under the Public Utility Regulatory Policies Act, 16 U.S.C.A. § 2601, the failure of the legislature to object to the promulgation was an irrelevant consideration in determining the validity of the rules. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

Concurrent Resolution.

The use of a concurrent resolution, as provided for in this section, does not bestow any greater dignity, power or authority on a concurrent resolution other than that provided in this section for rejecting a rule or regulation. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

—Required Contents.

Where, conspicuously absent from a concurrent resolution rejecting and declaring null and void, and of no force and effect, administrative rules and regulations regarding Individual/Subsurface Sewage Disposal Systems, was any statement that the regulations were

violative of legislative intent, said resolution did not satisfy the requirements of this section and was a nullity. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Constitutionality.

Both the Administrative Procedure Act and this section were created in the constitutionally mandated manner. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The condition enunciated in this section is that the rules which the legislature has delegated the authority to promulgate comply with the legislative intent of the enabling statute, and this conditioned grant of authority is consistent with the principle of separation of powers as set forth in Const., Art. 2, § 1, as these acts relate to the executive department. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

This section was created in the constitutionally mandated manner and is substantively proper under the terms of Const., Art. 2, § 1, in that it does not permit the exercise of power by the legislature in rejecting rules or regulations properly belonging to the executive or the judiciary. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

This section, as to rescinding rules and regulations pursuant thereto, is constitutional, however, this is not to suggest that all such legislative statutory reservations or rejections of rules or regulations pursuant thereto are necessarily consistent with the separation of powers principles. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Legislative Approval Advisory.

Any legislative approval of a rule, which is

granted pursuant to § 67-5217 and this section, has merely a nonbinding advisory effect upon the Supreme Court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of Const., Art. 2, § 1 and Art. 5, §§ 2 and 13. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Purpose.

The legislature in enacting § 67-5217 and this section has attempted to give to itself the power both to review administrative rules and to approve, modify, or to veto them as the case may be. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Rejection of Rules.

This section makes clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation is not an intrusion on the judiciary's constitutional powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Opinions of Attorney General. A nutrient management plan developed by the Idaho Department of Health and Welfare pursuant to § 39-105 is subject to legislative review pursuant to §§ 67-5223 and this section and further, the limitation on authority granted to the department and the broad authority granted the board supports the conclusion that the plan is subject to review by the board. OAG 94-2.

67-5292. Expiration of administrative rules. — (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted after June 30, 1990, shall automatically expire on July 1 of the following year unless such rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any such rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) Rules adopted pursuant to this chapter may be extended in whole or in part. When any part of an existing rule is amended, then that entire rule shall be subject to the provisions of this section.

(4) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect. [I.C., § 67-5219, as

added by 1990, ch. 22, § 2, p. 33; am. and redesign. 1992, ch. 263, § 54, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5219 and was amended and redesignated as § 67-5292 by § 54 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 1-5 of S.L. 1994, ch. 394 read:

"Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1994, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved modified or amended language until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1995, pursuant to Section 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule contained in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act."

Sections 1-5 of S.L. 1993, ch. 342 read:

"Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1993, pursuant to the provisions of Subsections (1) and (2) of Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved, modified or amended language until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Sections 67-5218 [now § 67-5291] and 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1994, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act."

Section 60 of S.L. 1992, ch. 263 read:

"(1) Prior to May 1, 1993, every agency shall deposit with the coordinator a copy, either in printed or electronic media form as the coordinator may prescribe, together with a proper index, certified by the executive officer, chairman or secretary of the agency, of all administrative rules adopted by the agency which are in effect or which will be in effect on July 1, 1993, in default of which such administrative rules shall become invalid.

"(2) Idaho administrative rules as published shall be the codification specified in section 67-5204, Idaho Code. Publication of administrative rules may be commenced by the publication of individual titles or parts thereof of the manuscripts of administrative rules heretofore filed with the state law library. Except as otherwise provided in this section, such manuscripts of rules, as so amended and supplemented, shall be deemed the initial agency text of such rules for the purposes of this act."

Section 61 of S.L. 1992, ch. 263 read:

"(1) Subsection (1) of section 60 of this act shall be in full force and effect on and after July 1, 1992, and additionally, the state auditor is authorized to appoint an administrative rules coordinator as soon as practical after July 1, 1992, and to declare such other sections of this act in full force and effect prior to July 1, 1993, as is necessary to effect an orderly publication of bulletins and the administrative code as soon after July 1, 1993, as possible.

"(2) All other sections of this act shall be in full force and effect on and after July 1, 1993. Any rules and regulations in effect on June 30, 1993, and rules which are promulgated between July 1, 1993, and the publication of the Idaho administrative code, shall be in full force and effect until such administrative rules are published by the coordinator."

Chapter 317 of S.L. 1992 read:

"SECTION 1. Except as provided in sections 2 and 3 of this act, every rule, as that term is defined in section 67-5201, Idaho Code, that would expire on July 1, 1992, pursuant to the provisions of subsections (1) and (2) of section 67-5219, Idaho Code, shall continue in full force and effect until July 1, 1993, at which time they shall expire as

provided in section 67-5219, Idaho Code.

"SECTION 2. All rules as that term is defined in section 67-5201, Idaho Code, which have not been affirmatively approved, modified or amended by the adoption of a concurrent resolution by both the senate and house of representatives in the second regular session of the fifty-first legislature shall continue in full force and effect in such approved, modified or amended language until July 1, 1993, at which time they shall expire as provided in section 67-5219, Idaho Code.

"SECTION 3. All rules as that term is defined in section 67-5201, Idaho Code, which have been rejected by the adoption of a concurrent resolution by both the senate and the house of representatives in the second regular session of the fifty-first legislature shall be null, void and of no force and effect as provided in section 67-5218, Idaho Code.

"SECTION 4. Nothing contained in this act shall be deemed to prohibit an agency as that term is defined in section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1993, pursuant to sections 1 and 2 of this act, according to the procedures contained in chapter 52, title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"SECTION 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 55 of S.L. 1992, ch. 263 is compiled as § 33-105.

S.L. 1990, ch. 22, became law effective February 22, 1990, without the governor's signature.

CHAPTER 53

PERSONNEL SYSTEM

SECTION.

7-5301. Establishment of personnel commission and declaration of policy.

SECTION.

67-5302. Definitions.

67-5303. Application to state employees.

67-5303A. [Repealed.]

RULES GOVERNING MEDICAL ASSISTANCE

000. LEGAL AUTHORITY. Pursuant to Section 56-202(b), Idaho Code, the Idaho Legislature has delegated to the Department of Health and Welfare the responsibility to establish and enforce such rules and regulations and such methods of administration as may be necessary or proper to administer public assistance programs within the state of Idaho. Pursuant to Section 56-203(g), Idaho Code, the Idaho Legislature has empowered the Department to define persons entitled to medical assistance in such terms as will meet the requirements for federal financial participation in medical assistance payments. (11-10-81)

001. TITLE AND SCOPE. (7-1-93)

01. Title. These rules are to be cited as Idaho Department of Health and Welfare Rules and Regulations, Title 3, Chapter 9, "Rules Governing the Medical Assistance Program." (11-10-81)

02. Scope. Pursuant to Section 56-203(i), Idaho Code, these rules set forth general provisions regarding the administration of the Title XIX Medical Assistance Program within the state of Idaho and identifies the amount, duration, and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals. All goods and services not specifically included in this chapter are excluded from coverage under Medical Assistance. (9-1-82)

002. POLICY. It is the policy of the Department, as provided in accordance with Section 56-209(b), Idaho Code, that medical assistance will be made available to all recipients of old-age assistance, aid to dependent children, aid to the blind, aid to the permanently and totally disabled, and other persons covered by Title XIX of the Social Security Act. (11-10-81)

003. DEFINITIONS. For the purposes of these rules, the following terms will be used, as defined below: (11-10-81)

01. Abortion. The medical procedure necessary for the termination of pregnancy, endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman; these rules are effective retroactively from October 1, 1993. (2-17-94)

02. Access Unit (ACCESS). Access to Care Coordination, Evaluation, Services and Supports. Multidisciplinary, transdivisional unit located in the regional developmental disabilities program that has the responsibility of determining eligibility, approving services, assuring quality and developing resources for services and supports for individuals with developmental disabilities. (10-1-94)T

03. Ambulatory Surgical Center. Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (9-30-84)

04. Bill. The itemized cost of all services provided to one (1) recipient on a single claim form. (11-10-81)

05. Bureau. The Bureau of Medicaid Policy and Reimbursement within the Division of Welfare, Idaho Department of Health and Welfare, which has the responsibility for administration of the Medical Assistance Program for the state of Idaho. (8-1-92)

06. Bureau of Systems and Operations. A Bureau of the Division of Welfare charged with the responsibility of investigation and seeking prosecution of cases involving Medicaid fraud. (8-1-92)

07. Buy-In Coverage. The amount the State pays for Part B of Title C XVIII on behalf of the A/R. (11-10-81)

IN *	DATE APPROVED _____
SUPERSEDES	EFFECTIVE DATE <u>7/1/94</u>
TN *	DATE TO C.O. _____
COMMENTS	

08. Category I Sanctions. Less severe administrative sanctions, which can be employed concurrently, which neither require notification nor are subject to appeal unless specifically allowed. (11-10-81)

09. Category II Sanctions. Severe administrative sanctions which are appealable as provided for in Idaho Department of Health and Welfare Rules, Title 5, Chapter 3, Sections 301., et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings." (10-1-94)T

10. Central Office. The administrative headquarters for the Idaho Department of Health and Welfare which are located in the State Office Building (State Towers), 450 West State Street, Boise, Idaho 83720. (11-10-81)

11. Claim. An itemized bill for services rendered to one (1) recipient by a provider submitted on any of the following Department claim forms: (11-10-81)

a. DHW PH 3-80, "Physician Invoice" or such other claim form as may be prescribed by the Department; or (11-10-81)

b. DHW 03-80, "Title XIX Pharmacy Claim"; or (11-10-81)

c. DHW-AD78, "Adjustment Request"; or (11-10-81)

d. DHW OP REV 4-80, "Hospital Out-patient"; or (11-10-81)

e. DHW IP 3-80, "Hospital In-patient"; or (11-10-81)

f. DHW 0137, "Attending Dentist's Statement"; or (11-10-81)

g. DHW NH 3-80, "Nursing Home Statement"; or (11-10-81)

h. HW-0034 "Consent Form" for sterilization procedures. (11-10-81)

12. Collateral Contacts. Contacts made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record. (10-6-88)

13. Contraception. The provision of drugs or devices to prevent pregnancy. (1-16-80)

(DHW). 14. Department. The State of Idaho Department of Health and Welfare (11-10-81)

Welfare. 15. Director. The Director of the Idaho Department of Health and Welfare. (11-10-81)

16. Durable Medical Equipment (DME). Equipment other than prosthetics or orthotics which can withstand repeated use by one or more individual, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a MA recipient. (11-1-86)

17. Educational Services. Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the recipient or required by federal and state educational statutes or regulations; are not "related services" as listed in Section 120.; and such